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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 244

NICHOLAS MAMULA, Petitioner

v.

UNITED STEELWORKERS OF AMERICA, an unincorporated Labor Union and I. W. ABEL, International Secretary-Treasurer thereof, Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Nicholas Mamula, respectfully prays that a writ of certiorari issue in the above captioned case directed to the United States Court of Appeals for the Third Circuit to review and reverse its judgment in appeal No. 13,782 filed June 5, 1962, wherein the said Court of Appeals reversed the judgment and decree of the District Court of the United States for the Western District of Pennsylvania and remanded with directions that the complaint be dismissed.

CITATIONS TO OPINIONS BELOW

The opinion and judgment of the Circuit Court of Appeals for the Third Circuit is printed in Appendix A hereto, infra pp. 17-28 and is not officially reported. The opinion of the District Court, is printed in Appendix A hereto pp. 29-38, and is reported in 198 F. Supp. p. 652.

JURISDICTION

The opinion and judgment of the Circuit Court of Appeals were entered on June 5, 1962. The jurisdiction of this Court is invoked under 28 U.S.C.A. Section 1254 (1).

QUESTIONS PRESENTED

1. Whether a union member who is denied recognition as a nominee for international union office has standing to assert a civil action in a Federal District Court under Title I of the Labor-Management Reporting and Disclosure Act of 1959, Sept. 14; 29 U.S.C.A., par. 401.

2. Has a Federal District Court jurisdiction of a complaint brought by a union member seeking recognition of his status as a nominee for international union office, before the election is held, under Titles I and IV of the Labor-Management Reporting and Disclosure Act of Sept. 14, 1959; 29 U.S.C.A., par. 401?

3. Whether a Federal District Court which assumes jurisdiction of a complaint by a union member before an election, and which specifically preserves all rights of the plaintiff although denying a preliminary

injunction to postpone the election, loses jurisdiction of the cause by reason of Title IV of the LMRDA of 1959.

4. Is the nomination process of a union part of the election procedure so as to require secret ballot and fundamental democratic safeguards for the members therein as set out in Titles I and IV of the LMRDA of 1959?

5. Whether a union constitution which lacks any provision for nomination of candidates for international office therein is inconsistent with the provisions of Titles I and IV of the LMDRA of 1959.

STATUTE INVOLVED

The statutory provisions involved are Section 2, (a), (b), (c), Sections 101(a)(1), (a)(4), Section 101 (b), Section 102 and Section 103 of Title I, and Sections 401(a), and 401(e) of Title IV of the Act of September 14, 1959; 29 U.S.C.A., par. 411(a)(1), (a)(4), 411 (b), par. 413, par. 481(a) and 481(e). They are printed in Appendix B infra, pp. 39-43.

STATEMENT

Petitioner, a member, and at all times pertinent, the duly elected president of Local 1211, United Steelworkers of America, was, with others, orally nominated for the office of Director of District 20 of that international union, at the regular meetings of several local unions in the said District. At the same meetings, attended by a small fraction of the membership, voice votes were taken as to the nominee preference of each local meeting. The oral vote was protested in vain by petitioner and others putting his name in nomination.

The international union constitution contains no provision for nominations of international officers. (Joint Appendix Vol. II pocket part); but the method of nomination is left to the local unions. (Joint Appendix Vol. II, p. 321a, Pltf. Exhibit 12).

Local union constitutions provide for nomination to be made at one monthly meeting, upon advance written notice (Local constitution, Joint Appendix Vol. II, p. 292a, par. 14) and election at the following monthly meeting (Local constitution, Joint Appendix Vol. II, p. 293a, par. 4).

The International union recognized the nominees selected by oral votes aforesaid.

Petitioner unsuccessfully appealed the nominations to the union's international executive board.

Petitioner then filed his complaint (Joint Appendix Vol. I, pp. 4a through 11a) in the District Court of the United States for the Western District of Pennsylvania, asking a restraining order or prelimina[illegible] injunction in advance of the election.

Respondents filed an Answer (Joint Appendix Vol. I, pp. 85a through 92a).

After hearing the application for preliminary relief, the District Court denied an order restraining the holding of the election "without prejudice" to the petitioner (Appendix A hereto, p. 29).

The final hearing in the District Court was held after the election, wherein no opposition candidates were entered to the recognized "nominees;" and, thereafter, it entered an opinion and order declaring the election void (Appendix A hereto appended, pp. 29-38).

Upon appeal to the Court of Appeals for the Third Circuit, the District Court's order was reversed and the complaint of petitioner ordered dismissed (Appendix A, pp. 17-28).

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I. Unless reversed, and the decree of the District Court reinstated, the opinion and order of the Circuit Court of Appeals negates a basic purpose of the Labor-Management Reporting and Disclosure Act of 1959.

The Congressional "Declaration of Findings, Purposes, and Policy", set out in Section 2(a) of the Act is appended hereto in Appendix B, p. 39. That it is the intent of the Act to protect and expand union democracy in the "public interest" is patent. The District Court opinion (Appendix A, pp. 29-38, and order, p. 38 therein), declares that the election procedure for international union officers of respondent union were in fact "incompatible with the Labor-Management Reporting and Disclosure Act of 1959"; further, that, because the membership is so numerous and the meeting halls of the locals so inadequate, the membership (entitled by the Act to nominate and vote by secret ballot for its officers) had no notice of or opportunity to vote for nominees for international union office where a fractional membership only, on vocal vote, determined such nominees at a single meeting. The District Judge held that the absence of union constitutional procedure for protecting the privacy of choice by the entire membership, coupled with the active interest and attendance of the representatives of the international union at such local nominating meetings, and the fact that no opposition actually appeared on the election ballot, constitute a primary system "contrary to every known requirement of free elections in political life". He found that the system in fact

"fosters and promotes domination by the incumbent officers".

The District Court declared that this case "is fundamental to all members of the Steelworkers—The issue raised—goes to the heart of the constitution of the Steelworkers—This court concludes that plaintiff's fundamental rights under Section 101 have been violated and were violated as of December 1, 1960, in that under the Steelworkers constitution there was no effective way for plaintiff to exercise an equal right and privilege within such organization to nominate or to be nominated a candidate for District Director; and further that the United Steelworkers has no reasonable rules and regulations in its constitution setting up nominating and election procedures with regard to International officers." He decreed the election void (order, Appendix A, p. 38).

In its opinion, the Circuit Court of Appeals makes no observation wth regard to the findings or conclusions of the District Court, but, relying upon excerpts from the legislative history of the Act, concludes that petitioner had no standing to bring the action under Titles I or IV of the Act, even though he sought pre-election relief, and that the District Court had no jurisdiction over the complaint. The petitioner's rights as a member to contest the incompatibility of the union constitution and the union nominating procedures with the statute, even though they affected him personally, were held to be inadequate to confer jurisdiction of the complaint on the District Court. The opinion treats the petitioner as being a "candidate" and, therefore, having no standing to invoke Title I in a pre-election complaint; further, it states, that he lacks standing to enforce the rights of others.

To say that Mamula the member has a right to nominate or be nominated under Title I, but that this right can not be enforced under that Title is at the very least illogical.

To say that every member can nominate (including Mamula), but that the candidate so nominated has no standing to enforce his nomination or right of candidacy, robs the law of meaning as well.

The Court of Appeals has in effect negatived the congressional intent of Title I of the Act by declaring that a Federal court has no jurisdiction to protect union democracy before an election is held; and that the moment a member is nominated for an office, or is a candidate therefor, he ceases to have "standing" as a member to protect his rights under Title I.

Although at the very outset of the Bill of Rights, Title I, Sec. 101(a)(1) the Act declares:

> "Equal Rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization . . .".

—yet, the Court of Appeals merely finds that "Title I guarantees union members an equal opportunity to vote", omitting reference to and ignoring completely the plain language "to nominate candidates" in the mandate of this section. Furthermore, is "shall have equal rights" equated with "equal opportunity"? Is this latter phrase of the Court of Appeals not a regression from the clear language of the Act?

Reasons Relied on for Allowance of the Writ.

The District Court read the plain, clear and unequivocal language of Sec. 101(a)(1) with this Honorable Court's mandate of *United States v. Oregon*, 366 U.S. 646, 648; 815 S. Ct. 1278, in mind, and concluded that the words "shall have equal rights and privileges—to nominate, to vote in elections—" meant exactly what these words said, and not what a legislator historically claimed to have intended to secure passage of the Act.

Certiorari is urged to prevent frustration of this legislation so important to the democratic process.

This Honorable Court has often declared: "Nor are we so ready to frustrate the expressed will of Congress or that of the state legislatures. Cf. *Southern Pacific Co. v. Gallagher*, 306 U.S. 167, 172; *Barrows v. Jackson*, 346 U.S. 249, 256, 257.

II. The Court of Appeals has so far departed from the mandate of the decisions of this court as to call for an exercise of this Court's power of supervision.

(a) *Under the decisions herein, petitioner's standing to assert rights granted by Title I is clear.*

The rights of petitioner as a member and candidate are closely interwoven with the rights of others which are by the decision of the Court of Appeals denied them in common.

While this Honorable Court has "generally insisted that parties rely only on constitutional rights which are personal to themselves" in seeking review of lower court decisions; *Tileston v. Ullman*, 318 U.S. 44; *McGowan v. Maryland*, 366 U.S. 420, 430; "Standing" to complain of

constitutional violations of rights of third parties is acknowledged, however, where the plaintiff himself is injured by such violations; *Barrows v. Jackson, supra.* In *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, certiorari was granted herein "because of the importance of the issues and their relation to the Employees Loyalty Program"; p. 130.

In *N.A.A.C.P. v. Alabama,* 357 U.S. 449, the petitioning corporation was granted certiorari because the Alabama court decisions were construed to adversely affect the right of free association of members not parties of record.

In the Barrows case, this Court asserted its jurisdiction to prevent a State Court from denying protection to a private litigant (a Caucasian) who was sued for selling real estate to a Negro in "violation of a restrictive covenant" in a deed, because of the importance and relationship to fundamental principles to which such covenant is abhorrent.

In *Pierce v. Society of Sisters,* 268 U.S. 510, petitioning schools were permitted to "assert in defense of their property rights the constitutional rights of the parents and guardians" of students not parties to the proceedings, in obtaining a grant of certiorari.

Other instances of similar allowance of certiorari upon petitioners' assertion of a close and interwoven relationship with fundamental rights of others who would have direct "standing" under the general rule requiring personal interest in the petitioner are, of course, *Joint Anti-Fascist Refugee Committee v. McGrath, supra,* p. 141, 154-154; *Columbia Broadcasting System v. U. S.,* 316 U.S. 407, 422-423; *Helvering v. Gerhart,* 304 U.S. 405;

Reasons Relied on for Allowance of the Writ.

Truax v. Raich, 239 U.S. 33; *U.S. v. Railroad Co.*, 17 Wall 322; *Quong Ham Wah v. Jeffers*, 342 U.S. 48, 52; *F.C.C. v. Sanders Bros. Radio Sta.*, 309 U.S. 470; *Wachter v. Pizzutti*, 276 U.S. 13, 26-28.

(b) *The Court of Appeals disregarded the plain, clear and unequivocal language of the Act, and bases its opinion on excerpts from the legislative history despite the decisions of this Honorable Court cautioning against judicial avoidance of statutory language, and the natural, normal implications arising therefrom.*

Resort to legislative history is unnecessary when a statute is clear and unequivocal on its face; *United States v. Oregon, supra; Natl. Home, etc. v. Wood*, 299 U.S. 211, 216.

The decision of the Court of Appeals is, moreover, inconsistent and in conflict with the basis for its holding in *Hughes v. Local 11 of Intl. Assn. of Bridge, etc.*, 287 F (2) 810, wherein it:

(a) holds that the legislative history is not controlling on who is deemed to be a "member" of a union, p. 817;

(b) declares that rights of a "member" under Title I of the Labor-Management Reporting and Disclosure Act of 1959, are by *implication* vested upon a person not "admitted" as a member, but who has "fulfilled all of the requirements for membership";

(c) holds that a District Court has jurisdiction of a complaint which asserts right of member-

ship in a union, although the statute confers no such right except by "implication."

Yet here the Court of Appeals denies an admitted member rights which are far more apparent in the plain language of the statute as well as by fair and logical implication, arising therefrom, and orders dismissal of his complaint for lack of jurisdiction under the Act based on legislative history.

This Honorable Court has granted certiorari to resolve conflicts resulting in lack of uniformity within a circuit where the problem is of importance; *John Hancock Inc. Co. v. Bartels*, 308 U.S. 180; *Dickinson v Petroleum Conversion Corp.*, 338 U.S. 507; *Maggio v. Zeitz*, 333 U.S. 56.

(c) *The Court of Appeals ignored the judgments of this Honorable Court in its definitive decisions on the terms "election" and "nomination."*

The right to have elections conducted fairly, including secrecy, is a necessary implication to the existence of a democratic society and representative government.

All rights created or secured by the Constitution are not found in Acts of Congress; *In re Neagle*, 135 U.S. 1; *In re Quarles*, 158 U.S. 532; *Motes v. U.S.*, 178 U.S. 458; *Logan v. U.S.*, 144 U.S. 263; *Hodges v. U.S.*, 203 U.S. 1; *Rakes v. U.S.*, 212 U.S. 55.

The implications of such terms as "representatives," "secret ballot" and "election" in a democracy are as fundamental as the express language of the Constitution.

To say that an Act of Congress, itself the product and essence of the implications of these meaningful terms, cannot be said to have intended the full impact of all implications thereof upon union election procedures, insults logic.

The Court of Appeals ignores the normal and necessary implications of Title I, Section 2(a), referring to the rights of employees to "choose their own representatives," and Section 101(a)(1), their right "to nominate candidates, to vote in elections—," in the light of the specific and unequivocal language of Section 401(e) requiring "secret ballot," right of candidacy, right to hold office and right to proper notice of elections; but more important, the implications that Americans attach automatically to all these terms, are wiped out by the decision of the Court of Appeals.

The Pennsylvania Supreme Court, in *John Leonard v. The Commonwealth ex rel. Lewis C. Cassidy, Attorney General*; 112 Pa. 607, pointedly wrote:

> "What is an election law? Here again we must bring to our aid the common and popular use of words. Our laws are intended for the people, who are presumed to read and understand them. They are not like the edicts of the Roman Emperor Caligula, which, Dio Cassius says, were written in very small characters and hung up so high that the people could not read them. When laws are made by a popular government, that is to say, "a government of the people, by the people and for the people," we may safely assume that words in a statute or constitution are used in the sense in which the people who made the statute or constitution understood them. So that when the people inserted in their con-

stitution the words "any election law," it is fair to assume that they meant any law relating to elections. — Under our frame of government a vast system of political machinery has grown up by which elections have been for many years practically controlled. It is so far-reaching in its effects that the people have in many instances little to do at the polls beyond the ratification of what had already been done by nominating conventions. — The influence which these primary elections have for good or evil upon the politics of the country is overshadowing. — The importance of the relation of the primary to the general election must be apparent to every one who does not shut his eyes, that he may not see, and stop his ears that he may not hear. Primary elections and nominating conventions have now become a part of our great political system, and are welded and riveted into it so firmly as to be difficult of separation."

See, also, *Commonwealth v. Young*, 16 Pa. Super. 317.

This Honorable Court has taken an equally strong position with respect to the vital relationship of primaries to elections.

In *Smith v. Allwright*, 321 U.S. 649, this Court had held that a resolution of the Texas Democratic Party barring Negroes from participating in the primary elections was unconstitutional on the theory that under the Texts statute the primary constituted an integral part of the state's electoral machinery.

South Carolina tried to avoid the *Allwright* decision by repealing all constitutional and statutory provisions which mentioned primaries and by arguing that the

South Carolina Party was a private organization, not part of the electoral system, and hence not subject to the constitutional restrictions on the states. The Circuit Court of Appeals held that denial of a primary ballot to Negroes violated the Fourteenth and Fifteenth Amendments; *Rice v. Ellmore,* 165 F(2) 387 (4th Circ., 1947) cert. den. 333 U.S. 875 (1948).

Moreover, Negroes were held to have a right to register as members of the Democratic Party of North Carolina in *Baskin v. Brown,* 174 F2d 391 (4th Circ., 1949).

Likewise, the ingenious "Boswell" Amendment to the Alabama Constitution restricting registration to persons able to "understand and explain" any Article of the Federal Constitution was nullified by *Davis v. Schnell,* 81 F.S. 872, affd. 336 U.S. 933 (1949).

The Court of Appeals decision is an open sesame handed undemocratic, selfish or unprincipled union officers to perpetuate themselves in office by controlling their nomination procedures.

The impact of unions on every aspect of American society requires a liberal, rather than a narrow, construction of every law looking to preservation of the democratic process within such mass organizations.

Conclusion.

III. The important questions of federal law here involved have not been, but should be, settled herein.

Obviously, the questions here concern the applicability of an act of Congress which goes to the very core of operation of all union organizations.

The apparent recognition of the individual member and his rights within his union which Title I, Section 2(a) and Section 401(e) grant, is wiped out by the decision of the Court of Appeals.

Within the United Steelworkers alone over 1,000,000 members in almost 3,000 locals are here being foreclosed their rights to sue in a federal court under Section 102 of Title I, by the decision of the Court of Appeals. Every member of every local of every union in the country may soon feel the impact of that decision unless it is reversed herein!

CONCLUSION

For the reasons aforestated, it is respectfully submitted that a writ of certiorari should herein be granted.

Respectfully submitted,

HARRY ALAN SHERMAN
Counsel for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,782

NICHOLAS MAMULA
v.
UNITED STEELWORKERS OF AMERICA, AN UNINCORPORATED LABOR UNION AND I. W. ABEL, INTERNATIONAL SECRETARY-TREASURER THEREOF,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued March 9, 1962
Before KALODNER, STALEY and HASTIE, *Circuit Judges.*

Opinion of the Court

(Filed June 5, 1962)

By STALEY, *Circuit Judge.*

The plaintiff, Nicholas Mamula, commenced this action under the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C.A. § 401 et seq., alleging that certain of the rights guaranteed to him thereunder were violated by defendants, United Steelworkers of America, AFL-CIO ("union"), and its Secretary-Treasurer, I. W. Abel. At all times relevant, plaintiff was president of Local Union 1211 of District 20 of the union. The union is divided into a number of geo-

graphically defined "districts". Its constitution provides that each local shall have the right to nominate a candidate for district director, and nomination by any five locals within a district shall entitle the nominee to be placed on the district ballot. The union's constitution, however, does not prescribe the procedure for selecting nominees. This is left to the locals.

Nomination meetings were held by locals in District 20 in November and December of 1960. Plaintiff's name was not placed on the ballot for district director, although by letter his counsel requested the union to do so. Attached to the letter were affidavits executed by members of six different locals within District 20. Each one indicated that plaintiff's name had been placed in nomination for district director at each of the respective local's nomination meeting. The record showed, however, that plaintiff was defeated. Before the actual election for district director was held, plaintiff filed a complaint in the district court, alleging that defendants had denied him an opportunity to submit his name for candidacy to the membership and that the union's constitution and bylaws fail to prescribe procedures to be followed in selecting a nominee. This, he said, constituted a violation of Title I, §§ 101(a)(1)(2)(4) and 102, 29 U.S.C.A. §§ 411(a)(1)(2)(4) and 412 of the LMRDA, and requested a temporary injunction or restraining order enjoining the election of a district director, and that the court direct the union to place his name on the district ballot. The district court denied the request, and the election was held. The matter came on for full hearing, and thereafter the district court entered an order setting the election aside, under Title I, § 101(a)(1) of the

LMRDA, 29 U.S.C.A. § 411(a)(1).[1] It is from this order that defendants have appealed. More particularly, the district court found that the union's constitution was "lacking and deficient in failing to set forth nominating procedures for its International officers in order that members rights under Section 101 will be protected." Some of the particular inadequacies listed by the district court were that the union hall, where voting was conducted, had a capacity of 600, while Local 1211 had a membership in exces of 11,000. Further, that the nomination and voting took place at one meeting, although at the time set for the meeting one-third of the membership was at work and unable to attend.

The defendants first contend that Title IV, §§ 401-403 of the LMRDA, 29 U.S.C.A. §§ 481-483, and not Title I, governs the procedures for nominating and electing officers and sets forth exclusive remedies for violation of these procedures, and that under Title IV the plaintiff lacks standing to bring this action. A reading of Titles I and IV in conjunction with the legislative history of the LMRDA, and consideration of the pertinent decisions that have been rendered, compel us to conclude that this contention is correct.

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1. Section 101 in pertinent part reads as follows:

"(a)(1) Equal rights—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws." 29 U.S.C.A. § 411(a)(1).

Title I guarantees union members an equal opportunity to vote, while Title IV prescribes the procedures that are to be followed in nominating and electing union officers. It also, just as clearly, prescribes the remedies available to a union member where these procedures are not followed. The present Title I was not in the LMRDA when it left Committee.[2] Title I, frequently referred to as the bill of rights section, was introduced as an amendment to the LMRDA by Senator McClellan who, during debate, refered to § 101(a)(1), saying:

> "The select committee found time and again the denial of the right to vote, the denial of the right to work, the denial of the right to have a voice, the denial of the basic human rights on which our very freedom was founded."[3]

The desire to protect the fundamental right of a union member to vote was again apparent when Senator McClellan told the Senate:

> "* * * [O]bviously we give the union members some rights in the bill, because we insert in the bill a criminal penalty in the case of those who violate the rights given the union members. I simply propose that we define and describe those rights, which are basic, and which every citizen of the country is entitled to. I believe we should elucidate on this point."[4]

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2. S. 1555, 86th Cong., 1st Sess. 1959.

3. 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1103. U.S.Govt. Printing Office, 1959.

4. Id. at p. 1106.

Earlier he referred to it in debate and said:

"If this bill should be enacted into law, it would bring to the conduct of union affairs and to union members the realty of some of the freedoms from oppression that we enjoy as citizens by virtue of the Constitution of the United States, which incidentally does not make an exception for union members."[5]

Before he offered the amendment containing the bill of rights section, Senator McClellan introduced S. 1137.[6] The proposed bill contained a bill of rights provision which expressly directed that nominations and elections be conducted in accordance with section 302 thereof. That section, in turn, was in substance similar to the provisions of Title IV of the LMRDA.

On February 6, 1959, Senator Mundt introduced S. 1002, which was directed specifically at providing democratic procedures in the election of officers. That bill contained detailed provisions dealing with union nominations and elections, and was considered by the Senate side by side with the McClellan bill of rights amendment, and was not viewed as being incompatible with it. The Mundt bill did not pass the Senate. Thereafter, the McClellan amendment was replaced by the so-called Kuchel substitute that passed the Senate.[7] Debate on the substitute made it clear that it was in the main a reenactment of the McClellan amendment, which is now Title I.[8]

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5. Id. at p. 1098.

6. S. 1137, 86th Cong., 1st Sess. 1959.

7. 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1239.

8. Id. at pp. 1229-1239.

Title IV, on the other hand, deals comprehensively with the procedure for nominating and electing union officials. It would be inappropriate to set it out in extenso here, so we shall summarize its provisions. Section 401 prescribes the frequency of elections for certain enumerated officers, distinguishing between local and international officers, and requires use of a secret ballot. It goes on to require that balloting shall be by members in good standing or at a convention of delegates selected by ballot.[9] Further, a union is under a duty to comply with all reasonable requests by candidates for union office to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Also, every bona fide candidate has the right, which he can exercise once within a 30-day period prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization. The union is under an obligation to provide adequate safeguards to insure a fair election, including the right of any candidate to have an observer at the polls and at the counting of ballots.[10] Reasonable opportunities must be given members to nominate, and every member in good standing shall be eligible to be a candidate and to hold office, and shall have the right to vote for or otherwise support the candidate or candidates of his choice without being subject to penalty or discipline. Every member is en-

9. 29 U.S.C.A. §481(a) & (b).

10. Id. at §481(c).

titled to advance notice of an election. Detailed procedures are provided for retaining ballots and other records, and the election must be conducted in accordance with the bylaws and constitution of the union, except to the extent that they are inconsistent with Title IV.[11] The credentials of delegates to a convention that elects officers, as well as the minutes of the convention and other records of the convention pertaining to the election of officers, shall be retained for one year.[12] The items for which union funds may be spent in union elections is limited to providing notices and factual statements of issues not involving candidates and other expenses necessary for the holding of an election. Title IV further specifically sets forth in § 402, 29 U.S.C.A. § 482, that violations of the provisions outlined above can only be enforced by the Secretary of Labor once an election is held. The pertinent parts of the provisions read this way:

> "A member of a labor organization—
>
> "(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
>
> "(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The

11. Id. at §481(e).
12. Id. at §481(f).

challenged decision shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide." 29 U.S.C.A. §482(a).

Subsection (b) requires the Secretary of Labor to investigate complaints and to commence an action in an appropriate federal court to set aside any election where he has reason to believe that Title IV has been violated. The court has power to set aside the election and direct that a new one be held under supervision of the Secretary of Labor. The Secretary, after conducting the election, must certify to the court the names of persons elected and the court shall then enter a decree declaring that such persons have been elected. If the proceeding is for the removal of officers, the Secretary must certify the election results and the court shall enter an appropriate decree declaring whether such officers have been removed.[13] Title IV goes on in §403, 29 U.S.C.A. §483, to provide that: "The remedy provided by this title for challenging an election already conducted shall be exclusive." Furthermore, where an individual union member has standing to bring suit under Title IV, Congress clearly so indicated. Section 401(c) guarantees candidates for union office the right to inspect certain union membership lists, and upon failure of union officials to make such lists available, any bona fide candidate has standing to bring suit in a district court of the United States.

The bill introduced by Senator Kennedy, and known as the Kennedy-Ervin bill, contained the present rem-

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13. Id. at §482(c).

edy.[14] The committee report accompanying the bill categorically stated that post election actions to enforce the nomination and election provisions could only be initiated in the courts by the Secretary of Labor.[15] At the same time that the Kennedy-Ervin bill was under consideration, an administration bill was introduced.[16] That bill expressly provided for enforcement by both the Secretary and individual union members. The Kennedy-Ervin bill, and not the administration bill, was passed by the Senate. When the LMRDA reached the House, Title IV was changed to include a provision that read as follows:

> "§402(a). A member of a labor organization—
>
> "(1) who is aggrieved by any violation of section 401, and
>
> "(2) who (A) has exhausted the reasonable remedies available under the constitution and bylaws of such organization and of any national or international labor organization with which such organization is affiliated, or (B) has diligently pursued such available remedies without receiving a final decision within six calendar months after their being invoked, may bring a civil action against such labor organization in any district court of the United States * * *."[17]

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14. S. 1555, 86th Cong., 1st Sess. 1959.

15. S. Rep. No. 187, 1 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, pp. 397, 417.

16. S. 748, 86th Cong., 1st Sess. 1959.

17. 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 1697.

That provision was removed, however, by the conference committee, prompting Senator Kennedy to say, while reporting back to the Senate:

> "The provisions requiring fair and periodic elections are taken from the Senate bill. The Landrum-Griffin bill would have substituted a variety of suits by individual union members for enforcement by the Secretary of Labor. The House conferees receded from this position and the Senate provision was restored."[18]

Several recent district court decisions that have discussed the interplay between Titles I and IV, and the plaintiff's standing to bring this action, are in accord with our conclusion. They are Colpo v. Highway Truck Drivers and Helpers, Local 107, 201 F. Supp. 307 (D. Del. 1961); Gammon v. International Ass'n of Machinists, 199 F. Supp. 433 (N.D. Ga. 1961); Acevedo v. Bookbinders and Machine Operators Local 25, 196 F. Supp. 308 (S.D. N.Y. 1961); Johnson v. San Diego Waiters & Bartenders Union Local 500, 190 F. Supp. 444 (S.D. Calif. 1961); Myers v. International Union of Operating Engineers, 40 CCH Labor Cases ¶66,436 (E.D. Mich. 1960); Byrd v. Archer, 38 CCH Labor Cases ¶66,083 (S.D. Calif. 1959).[19]

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18. Id. at p. 1433.

19. The Commissioner of the Bureau of Labor-Management Reports of the Department of Labor in a letter to plaintiff's counsel said:

> "While individual union members may have the right under state law to bring a private action to enforce the constitution and bylaws of the organization with respect to elections prior to the conduct thereof, once the election has been held the remedy provided by Section 402 becomes exclusive to the

Even if this were an action within the ambit of § 101 (a)(1) of Title I, 29 U.S.C.A. § 411(a)(1), it is clear that the plaintiff lacks standing to bring it. The enforcement provision for Title I is § 102, 29 U.S.C.A. §412, which provides that: "Any person whose rights secured by the provisions of this title have been infringed * * * may bring a civil action in the district court of the United States for * * * relief. * * *." There is nothing in the record showing any of plaintiff's rights as a union member set forth in Title I were violated by defendants. The facts point the other way, for he participated in the meeting, was its presiding officer, and had ample opportunity to nominate candidates. There is nothing in the provisions of Title I or its legislative history[20] that would give plaintiff standing as a candidate to bring this action. That is borne out by the district courts that have considered the question. Gammon v. International Ass'n of Machinists, supra; Johnson v. San Diego Waiters Union

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extent that such members' action challenges the conduct of the election. * * * After the election has been held, the member would have to follow the procedures prescribed by Section 402 i.e. he must first invoke the remedies available under the organization's constitution and bylaws and if he fails to obtain satisfaction within the union he may then complain to the Secretary within the time prescribed by 402(a). * * * But the Secretary cannot proceed with any investigation of the election under Section 402 until such time as your clients see fit to file complaints with him which meet the conditions set forth in Section 402(a) of the Act."

20. The legislative history on this point can be found in 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, pp. 1232-1233; 105 Cong. Rec. 10095 (86th Cong., 1st Sess. 1959).

Local 500, supra; Byrd v. Archer, supra. Furthermore, plaintiff does not have standing to enforce the rights of other union members. Johnson v. Stevenson, 170 F.2d 108 (C.A.5, 1948), cert. denied, 336 U.S. 904 (1949). On frequent occasions, the Supreme Court has held that an individual does not have standing to litigate the rights of another. E.g., McGowan v. Maryland, 366 U.S. 420 (1961); Cronin v. Adams, 192 U.S. 108 (1904).

The judgment of the district court will be reversed and the cause remanded with directions that the complaint be dismissed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

APPENDIX A

Opinion of District Court

WILLSON, J.

Plaintiff, Nicholas Mamula, is a citizen of Pennsylvania residing in Beaver County and at the time the suit was filed was President of Local Union 1211, District 20 of the United Steelworkers of America, an unincorporated labor union which is one of the defendants, the other defendant being its International Secretary-Treasurer, I. W. Abel. The jurisdiction of the court is based on the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.A. 401. It is well to note at the outset that the case was commenced by the filing of a complaint seeking a temporary restraining order. On January 3, 1961, when the complaint was filed, there was pending an election for District Director of District 20 pursuant to the constitution of the International Union, United Steelworkers of America, last revised and adopted at the general meeting held September 23, 1960. The International Union is composed of some 38 Districts situate in the United States and Canada. The constitution provides that each District elect a District Director every 4 years and the Directors are International officers. The election was to be held on February 14, 1961.

After hearing, this court denied the temporary restraining order but without prejudice, and subsequently the case came on non-jury. The parties have been heard evidence has been taken and counsel have submitted their briefs.

In his complaint plaintiff alleges that he was a member in good standing of Local 1211 of the defendant, United Steelworkers of America (hereinafter called Steelworkers), and that he was qualified under its constitution to be a candidate for the office of District Director of District 20. The complaint further says that the defendant Steelworkers, by the provisions of its constitution, particularly Article V, Sections 4 and 5, has chosen to permit the nomination for office of District Director by the vote of local unions within the District, requiring, however, a minimum of nominations by 5 local unions for a person to go on the District ballot. The complaint further alleges that the constitution of the defendant does not establish any procedure for the conduct of nominations for the office of District Director. Plaintiff alleges also that he was nominated during various meetings by various locals of District 20 for the office of District Director. But says plaintiff, as permitted by the constitution of the Steelworkers at the meetings of the locals, his name was placed in nomination and then according to the evidence, an immediate viva voce vote was taken by the members present and, although plaintiff was defeated, he claims, nevertheless, that under the procedure he is still a nominee of the respective locals and should have been placed on the District ballot. At the trial the parties stipulated that:

> "* * * in United Steelworkers District 20, which contains 35 local unions, Plaintiff's name was placed in nomination at nomination meetings of six locals, Nos. 1211, 1082, 1268, 1211, [1212?], 1261 and 3461, that at none of these was there any separate meetings for the voting on the choice of the Local's nominee, and that in four of the six

> Locals there was no secret ballot on the choice of the nominee. In addition, Plaintiff produced testimony that at a nomination meeting of a seventh Local Union, No. 1236, Plaintiff's name was placed in nomination, and that there was no separate meeting for choice of nominee and no secret ballot. * * *"

It seems to this court that the issue is squarely raised in this case as to whether the absence of any provision in the Steelworkers' constitution governing the conduct of the nomination and election procedures for International officers renders the Steelworkers' constitition incompatible with the Labor-Management Reporting and Disclosure Act of 1959. Defendants' counsel concedes that the constitution does not contain any detailed provisions governing this subject. They also concede that there is no uniform procedure among the local unions on this subject. Counsel even goes further and says that the provisions of the local union's constitution and by-laws relating to nominations and elections of local union officers and the governing provisions of Article VII, Section 8, of the Steelworkers' constitution on the subject are not by their terms applicable to the nomination of International officers. The result, says defendants' counsel, is that each local union conducts its nomination meeting in conformity with its own practices, subject only to the notice requirements and procedures set forth in Article V, Sections 4 and 5 of the Steelworkers' constitution and instructions sent out by the International Secretary-Treasurer. In this case those instructions were sent out November 10, 1960.

Defendants contend that the statute does not provide or require that nominations be made by secret

ballot and that therefore the procedures adopted by the locals, specifically Local 1211, in the nomination of a candidate for District Director and his subsequent election on February 14, 1961, were valid under the statute and under the constitution of the Steelworkers and the by-laws of Local 1211. I have concluded to the contrary.

The Bill of Rights section of the Statute, 29 U.S.C.A. 411, section 101 of the Landrum-Griffin Act in part provides:

> "(a)(1) Equal rights. — Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws. * * *"

It is plaintiff's rights under that particular section which the court believes have been violated. It is further concluded that the constitution of the Steelworkers is lacking and deficient in failing to set forth nominating procedures for its International officers in order that members rights under Section 101 will be protected.

The crux of the incompatability of the Steelworkers' constitution with the statute is found in Sections 4 and 5 of Article V entitled "Nominations and Elections of International Officers, * * *". The first sentence in Section 4 says that a local union shall have the right to nominate a member for each office to be filled. Section 5 says no person shall be a candidate who has not been

nominated by 40 or more locals but in the case of candidates for District Director, nominations by 5 locals shall be sufficient.

The rules then direct a local union to chose from among its members but one person to be its nominee for International office. In reality then, in electing International officers, two elections are held. The first election is by the local union for its nominee for International office. When these selections are made by the various local unions and the name forwarded to the International office, then Sections 6 through 12 inclusive, very carefully and precisely lay down the rules for the conduct of elections by each member of each local union for the International office by secret ballot. Defendants' counsel says that when a local union makes its choice of a nominee for the District ballot, that is merely a nomination. I disagree.

Local 1211 furnishes a good example of the deficient procedures and what happened there on December 1, 1960, happened in many of the other locals with regard to the election under discussion. Local 1211 had over 11,000 qualified members. The International constitution directed and local members were given at least one weeks notice of a nomination meeting. This notice was however a posted notice at the union hall. Under the evidence the practice is in all the locals of District 20 to call a nomination meeting for a set time and place in the regular union hall. At the meeting of December 1, 1960, complained of by the plaintiff, the local union hall does not seat over five to six hundred of a total membership in excess of 11,000. The selection of the Local 1211 nominee is done at one meeting. Some 300

members were present in the union hall at the time of the meeting. The plaintiff and the incumbent nominee were nominated at the meeting. An immediate vote was taken at which the incumbent was the victor. During the hours set for the meeting one-third of the membership was at work and unable to attend. But in any event no more than 600 could have attended as that was the limit of the union hall's capacity.

Under the Bill of Rights, Section 101, each member is entitled to equal rights and privileges to nominate candidates, vote in elections, attend membership meetings and to participate in deliberations in voting upon the business at such meetings subject to reasonable rules and regulations. In the election section of the statute, Sub-Chapter V (29 U.S.C.A. 481 (e)),

> "* * * a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office. * * *"

It is noticed that the foregoing is merely a reiteration of what each member is assured in the Bill of Rights section.

It is to be noticed that under Local 1211 by-laws, in choosing their own local officers, the members proceed much differently than in choosing International officers. With respect to the nomination and election of Local 1211 officers, the steps set up in its by-laws are:

1. The nomination by petition requiring a minimum of 25 signatures.

2. The list of nominees is posted in the local union office at least 8 days prior to election.

3. The Financial Secretary prepares an official ballot showing the nominees names after they have drawn for position on the ballot.

4. The election is then held by secret ballot over a 2 day period between the hours of 6:00 A.M. and 8:00 P.M.; The ballot box is situate in the union hall; the ballots are marked by each voting member and deposited in the ballot box prepared for that purpose.

Thus under Local 1211 procedure every one of the 11,000 members has a chance to participate in the nomination and vote in the election. The rules of Local 1211 on this subject appear to be reasonable rules and regulations and permitted under the statute.

A mere glance at the constitution of the Steelworkers as compared with our Local 1211 shows that there is a hiatus in the nomination procedures adopted and used in the instant election which the defendants nevertheless maintain are valid. The fact is and the evidence shows that paid staff members from the International headquarters appear at the union meetings when International officers are nominated and direct that the procedure be conducted under the Steelworker's constitution. That procedure however as has been demonstrated is deficient as it provides no method nor manner in which all members may participate in the nomination and selection of the union's candidate for District Directors.

In connection with this phase of the case, the defendants rely upon a letter from the Secretary of Labor's office to the International, Exhibit G, but that letter did not pass on the proposition at issue as the facts were not

shown as to whether actually every member had a reasonable opportunity to participate in nominating International officers. The letter indicated that the Landrum-Griffin Act does not require a secret ballot in nominations. I agree. I believe it will be found that nowhere in deliberative assemblies, under any rules of order, are nominations as generally known and understood, to be made by secret ballot. In practice and generally, a nomination need not even be seconded. See Roberts Rules of Order, Section 66, page 263. The question might be asked, what shall the procedure be under the circumstances shown by these facts? I think the answer is simple. The plaintiff would have no complaint whatsoever had the constitution of the Steelworkers directed that in nominating and choosing the Local 1211 candidate for District Director, it follow the procedure set forth in its by-laws for the nomination and election of local officers. The Steelworkers' constitution not providing any specific method and not directing that the local follow its own rules on the subject, there is a want of any orderly procedure whatsoever. The result is that each and every member's rights guaranteed him in the statute go unprotected under the Steelworkers' constitution and procedure.

Such a system, if it prevails, is contrary to every known requirement of free elections in political life. It is noticed that the evidence is that at each one of the meetings a member of the International staff was present, overseeing the nomination process. The system adopted and used permits the domination of a small meeting by the incumbents in office. The result of the District 20 election establishes the point just made. According to

the Steelworkers' report of the election held February 14, 1961, the 50,000 members in District 20 divided into 35 locals voted on but one candidate and that was the incumbent. The office pays $16,000.00 per year. It seems highly improbable that in a secret ballot subsequent to a nomination meeting every single one of the 35 locals of District 20 would choose the same candidate to go on the District ballot. The system used fosters and promotes domination by incumbent officers. The eligible voters may cast secret ballots at the election but such right is useless when there is only one candidate to vote for on the ballot.

And finally, the point is raised by the defendants that this is a complaint as to an election and that therefore the matter is governed by Sub-Chapter 5, Section 401 relating to elections which does not permit a suit by a member in the first instance. Under the election procedure the Secretary of Labor brings the action if he finds a violation of the statute in the election procedures. This court however takes the position that this case is fundamental to all the members of the Steelworkers. It is believed that Sub-Chapter 5 relates to the complaint as to any particular procedure in any specified election. The issue raised here however goes to the heart of the constitution of the Steelworkers. This court concludes that a plaintiff's fundamental rights under Section 101 have been violated and were violated as of December 1, 1960, in that under the Steelworkers' constitution there was no effective way for plaintiff to exercise an equal right and privilege within such organization to nominate or be nominated a candidate for District Director; and further that the United Steel Workers has no reasonable

rules and regulations in its constitution setting up nominating and election procedures with regard to International officers.

The decisions of other District Courts cited by defendants are not in this court's opinion decisive of the issues raised here. I have read those decisions and have made no quarrel with them but believe they have no applicability to the facts presented before me. An appropriate order will be entered.

ORDER

AND NOW, this 11th day of October, 1961, for the reasons mentioned in the foregoing opinion, the constitution of the United Steelworkers of America being incompatible as to the nomination and election of International officers with the provisions of Section 101 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 411, the election of Kay Kluz as District Director of District 20 of the United Steelworkers of America held February 14, 1961, is vacated and set aside and said election declared null and void.

/s/ JOSEPH P. WILLSON
United States District Judge

cc to: HARRY ALAN SHERMAN, ESQ.
WILNER, WILNER & KUHN, ESQ.

APPENDIX B

Sections of Labor-Management Reporting and Disclosure Act of 1959 here involved.

DECLARATION OF FINDINGS, PURPOSES, AND POLICY

Sec. 2. (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

TITLE I—BILL OF RIGHTS

Sec. 101. (a) (1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding be-

fore any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof.

Sec. 101 (b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

CIVIL ENFORCEMENT

Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

RETENTION OF EXISTING RIGHTS

Sec. 103. Nothing contained in this title shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and by-laws of any labor organization.

TITLE IV—ELECTIONS

TERMS OF OFFICE: ELECTION PROCEDURES

Sec. 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

Sec. 401 (e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary

authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NICHOLAS MAMULA, *Petitioner*

v.

UNITED STEELWORKERS OF AMERICA, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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STATUTE INVOLVED

The petition does not include the relevant portions of Title IV of the Labor Management Reporting and Disclosure Act, 73 Stat. 532-34, 29 U.S.C. §§ 481-483. Accordingly, Title IV is printed in its entirety in an Appendix hereto.[1]

STATEMENT

Petitioner, who was the President of Local 1211 of the United Steelworkers of America, was an announced aspirant for nomination as a candidate for the office of Director of District 20 of the Steelworkers in the Union's 1961 elections.[2] The Constitution of the Steelworkers[3] allows

[1] In this brief, we will cite the provisions of the Act by referring to the title and section numbers as they appear in the original enactment and in our Appendix, not as they appear in United States Code.

[2] The union is divided for administrative purposes into 30 geographically defined "Districts," and the affairs of the Union in each District are managed under the direction of a District Director, who is elected by a secret-ballot referendum vote of the members of all locals within the District.

Elections of District Directors are held every four years, and the

each local union in a district to select one person as its nominee for District Director, and provides that the name of each member selected as the nominee of 5 or more locals shall be placed on the ballot as a candidate for the office (Ex. 3, pp. 22-23). Petitioner's name was proposed for consideration at a number of locals, but at only one of the 35 locals in his district did the members select him as their nominee. Accordingly, his name was not placed on the ballot (J.A. 308a).[4]

Petitioner thereupon brought suit in the United States District Court for the Western District of Pennsylvania, for an injunction compelling the union to place his name on the ballot (J.A. 4a). The complaint alleged that the conduct of the nomination meetings did not conform to the requirements of the Labor-Management Reporting and Disclosure Act of 1959, commonly known as the Landrum-Griffin Act." [5]

The Court held a hearing on petitioner's motion for pre-

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procedures governing their nomination and election are spelled out in Article V of the Union's Constitution (Ex. 3). Each local in a district conducts a nomination meeting, upon at least one week's notice to its members, at which it selects its nominee for District Director. Its choice is communicated to the International Secretary-Treasurer. Art. V, Sec. 4. Members nominated by 5 or more locals are placed on the ballot. Art. V, Sec. 5. The election is then conducted in accordance with the detailed procedures of Art. V, Secs. 8-26.

[3] Exhibit 3 (hereinafter "Ex. 3") contained in pocket part to Volume II of the Joint Appendix.

[4] "J.A." refers to the Joint Appendix in the Court below.

[5] While petitioner's theory as to how the Act has been violated has not been uniform throughout this litigation, he has pressed three claims at various stages which are reiterated in the petition (p. 4). First, that since petitioner's name was proposed for nomination at more than 5 meetings, he was thereby "nominated" and entitled to be on the ballot (J.A. 4a-7a); Second, that the union's Constitution is somehow defective, in that it allows each local to determine the procedures governing its nomination meeting (J.A. 279a); Third, that the practice of some locals in selecting their nominee by oral vote (rather than by secret ballot) is somehow improper (J.A. 7a).

liminary injunction, at which time counsel for the union, though opposing the injunction on the ground that petitioner alleged no violation of his rights, pointed out to the court that if the election were held the exclusive procedure for challenging it would be the filing of a complaint with the Secretary of Labor (J.A. 80a). The Court nevertheless denied the preliminary injunction (J.A. 84a), although strongly indicating its view that nomination meetings at several locals had been improperly conducted (J.A. 76a-78a).

The election was duly held on February 14, 1961, without petitioner's name on the ballot.

On February 24, counsel for petitioner sent a copy of the complaint in his lawsuit to the Secretary of Labor, and in an accompanying letter noted that "it may yet be determined that the post-election remedy before you is the exclusive remedy available to a complainant" (J.A. 318a). Commissioner Holcombe, on behalf of the Secretary, replied that the remedy before the Secretary was indeed petitioner's sole method of challenging the already-conducted election. He added, however, that "the Secretary cannot proceed with any investigation of the election under Section 402 until such time as your clients see fit to file complaints with him which meet the conditions set forth in Section 402(a) of the Act" (J.A. 319a-320a). Despite this letter, petitioner never filed a complaint with the Secretary. He sought instead to have the election set aside in his pending lawsuit.

The Union moved for judgment on the pleadings on the ground that the exclusive remedy for challenging an election, once conducted, is that provided in Section 402 of the Act, requiring the filing of a complaint with the Secretary of Labor (J.A. 95a-96a). The Court, without ruling on this motion, proceeded to trial and on October 11, 1961, issued an order vacating and setting aside the election, and declaring it "null and void" (J.A. 286a).

On appeal, the Court of Appeals for the Third Circuit unanimously reversed. Finding that the Act, in § 403, explicitly declares that filing a complaint with the Secretary of Labor is the exclusive procedure for challenging an election, once conducted, the Court ruled that petitioner could not seek to challenge or set aside the election in a private lawsuit (Petition, pp. 17-28).

ARGUMENT

The decision below is clearly correct, and presents no substantial question requiring review by this Court. The Court of Appeals merely gave effect to the language of the statute which, after setting forth in Title IV a carefully drawn procedure for challenging and setting aside an election alleged to have been conducted in violation of the Act, goes on to provide that that procedure is exclusive.

> "No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections *prior to the conduct thereof* shall not be affected by the provisions of this title. *The remedy provided by this title for challenging an election already conducted shall be exclusive*" (Section 403; emphasis supplied).

Petitioner nowhere indicates why the remedy prescribed by Congress does not suit him. Though the petition frequently asserts that the opinion of the Court of Appeals "negates a basic purpose" of the Act, the opinion clearly does no such thing. It simply holds that petitioner, having failed (indeed willfully refused) to follow the procedure outlined in the statute, may not pursue a procedure of his own invention.

It happens that the court below is the first Court of Ap-

peals to rule on this issue. But, as it noted in its opinion (Petition, p. 26), the district court decisions are unanimously in accord. *Colpo* v. *Highway Truck Drivers and Helpers, Local 107*, 201 F. Supp. 307 (D. Del. 1961); *Gammon* v. *International Ass'n of Machinists*, 199 F. Supp. 433 (N.D. Ga. 1961); *Acevedo* v. *Bookbinders and Machine Operators Local 25*, 196 F. Supp. 308 (S.D.N.Y. 1961); *Johnson* v. *San Diego Waiters & Bartenders Union Local 500*, 190 F. Supp. 444 (S.D. Calif. 1961); *Myers* v. *International Union of Operating Engineers*, 40 CCH Labor Cases ¶ 66,436 (E.D. Mich. 1960); *Byrd* v. *Archer*, 38 CCH Labor Cases ¶ 66,083 (S.D. Calif. 1959). The Department of Labor also has determined that the Act precludes individual suits to set aside elections, as is manifested in Commissioner Holcombe's letter to petitioner's counsel (J.A. 319a-320a).

The Court below examined the legislative history, and found that it is in accord with the clear language of the statute:

> "The bill introduced by Senator Kennedy, and known as the Kennedy-Ervin bill, contained the present remedy. The committee report accompanying the bill categorically stated that post election actions to enforce the nomination and election provisions could only be initiated in the courts by the Secretary of Labor. At the same time that the Kennedy-Ervin bill was under consideration, an administration bill was introduced. That bill expressly provided for enforcement by both the Secretary and individual union members. The Kennedy-Ervin bill, and not the administration bill, was passed by the Senate. When the LMRDA reached the House, Title IV was changed to include a provision [for individual suits] . . .
>
> "That provision was removed, however, by the conference committee, prompting Senator Kennedy to say, while reporting back to the Senate:
>
> "'The provisions requiring fair and periodic elec-

> tions are taken from the Senate bill. The Landrum-Griffin bill would have substituted a variety of suits by individual members for enforcement by the Secretary of Labor. The House conferees receded from this position and the Senate provision was restored.'" (Petition, pp. 24-26).

In establishing the special Title IV procedure for setting aside union elections, Congress has assured judicial scrutiny of election conduct while at the same time preventing undue disruption of the affairs of the Union. For, inevitably, judicial review of the validity of a union election does have great potentiality for disruption of the union's affairs. The mere filing of a complaint challenging an election tends to cast a cloud over the actions of the elected officers, and a final adjudication that an election is invalid could create chaos within the union unless some provision is made to tide the union over until a new election is held.

The principal safeguard in the Title IV procedure (§ 402) is the provision that a union member seeking to have his union's election set aside must, after exhausting internal remedies for 3 months, file a complaint with the Secretary of Labor. The Secretary is directed to investigate the complaint and "if he finds probable cause to believe that a violation of this title has occurred and has not been remedied" to file a civil action. Only the Secretary can sue to set aside an election, not any member who wishes to disrupt the affairs of the union. It is thus assured that only substantial attacks on the union's election process will find their way into court.

If the Secretary sues, the challenged election is "presumed valid pending a final decision thereon" and "in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and by-laws may provide." Thus, Title IV assures that the Union's officers will be authorized to act during the pendency of the litigation, and, if the election is set aside, until new officers are elected.

If the Court, in a suit by the Secretary under Title IV, determines that a violation of the title "may have affected the outcome" of the election, it is authorized to declare the election void. The election process thus is disrupted only when a violation may have been decisive in determining the outcome.

Finally the Court, if it declares an election void, "shall . . . direct the conduct of a new election under supervision of the Secretary." The union is thus provided the Secretary's expert supervision, during the period between the declaration of invalidity of the old election and the holding of the new, in the formulation of changes in its election procedures to conform to the Act.

Petitioner would ignore the entire statutory scheme, and allow individual suits. The result, as demonstrated by the District Court's order in this case, may be a declaration that the election is "null and void", with no provision for the conduct of a new election, no supervision, and no indication as to how the alleged deficiencies in the original election may be corrected. Indeed, here, since the District Court found the Union's Constitution somehow "lacking and deficient" (J.A. 280a), apparently no new election could possibly be held until the Constitution were amended.

The District Court purported to set the election aside not under Title IV of the Act but under Title I, the "Bill of Rights" of union members. The Court of Appeals, finding as we have shown that the Title IV procedures are exclusive, ruled that elections cannot be set aside in individual suits under Title I. Moreover, as the Court of Appeals further noted, petitioner failed to show that he was denied his "equal right" to "nominate candidates" guaranteed in Title I:

> "There is nothing in the record showing any of plaintiff's rights as a union member set forth in Title I were violated by defendants. The facts point the other way, for he participated in the meeting [of his local union], was its presiding officer, and had ample opportunity to nominate candidates." (Petition, p. 27).

At most, petitioner's claim is that other members were denied their "equal rights" to participate in the nomination procedures. And the Court of Appeals was clearly correct in holding that Title I, which provides for an action only by persons "whose rights secured by the provisions of this title have been infringed by any violation of this title," does not confer on petitioner standing to enforce the rights of others. Cf. *Johnson* v. *Stevenson*, 170 F. 2d 108 (5th Cir. 1948), *cert. den.*, 336 U.S. 904 (1949).

Contrary to the contentions of the petitioner, the holding of the Court below does not deprive him of a remedy, or make unenforceable the democratic safeguards which the Act was designed to assure. The decision below simply follows the clear language and intent of the statute, which require that any person seeking to challenge or set aside a union election do so in accordance with the exclusive procedures set forth in Title IV.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX

The following is the complete text of Title IV of the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 532-34, 29 U.S.C. §§ 481-483.

TITLE IV—ELECTIONS

Terms of Office; Election Procedures

SEC. 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bonafide candidate shall be made by such labor organization and its officers, with equal treatment as to the

expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or de-

fault in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

Enforcement

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take

such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

Application of Other Laws

SEC. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.